



புதுச்சேரி மாநில அரசிதழ்

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**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 130/Lab/AIL/T/2017,
Puducherry, dated 21st August 2017)

NOTIFICATION

Whereas, the Award in I.D. (L) No. 46/2014, dated 13-6-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the Management of Pondicherry Co-operative Wholesale Stores Limited, Puducherry and Thiru K. Karthikeyan, Puducherry over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

A. RAJARATHINAM,

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT AT PUDUCHERRY**

Present: Thiru G. THANENDRAN, B.COM., M.L.,
Presiding Officer.

Tuesday, the 13th day of June 2017.

I.D. (L) No. 46/2014

Karthikeyan,
S/o. R. Krishnan,
No. 5, Balar Pillai Street,
Mettupalayam, Puducherry. . . Petitioners

Versus

The Managing Director,
M/s. Pondicherry Co-operative
Wholesale Stores Limited,
Puducherry. . . Respondent

This industrial dispute coming up before me for final hearing on 2-5-2017 in the presence of Thiru K. Velmurugan, Counsel for the petitioner and Thiru B. Mohandoss, Counsel for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following :

AWARD

1. This industrial dispute has been referred by the Government as per the G. O. Rt. No. 143/AIL/Lab./J/2014, dated 24-12-2014 for adjudicating the following:

(i) Whether the dispute raised by the petitioner Thiru K. Karthikeyan against the management of M/s. Pondicherry Co-operative Wholesale Stores Limited, Puducherry over his non-employment is justified? If justified, what relief, he is entitled to ?

(ii) To compute the relief, if any awarded in terms of money if, it can be so computed?

2. The averments in the claim statement of the petitioner, in brief, are as follows :

(i) The petitioner joined in the respondent management on consolidated basis during the month of August, 2002 and due to his sincerity and hard work the management appointed him as Daily rated Salesman during the month of May, 2005 and since from the date of his joining he discharged his services in a sincere and honest manner to the respondent management and further stated that he was assigned work in the Amudhasurabhi Liquor Shop, Muthialpet and on 31-8-2005 during the midnight, a theft was occurred in the said Liquor shop and the above fact was known to him only on 1-9-2005 morning when he opened the shop along with other staffs and as instructed by the Managing Director, Mr. Suresh, Legal Assistant and Mr. Janagiraman, Deputy Manager (Liquor), the petitioner had immediately lodged a police complaint to the Station House Officer, Muthialpet Police Station and thereby, the Police Officials rushed to the spot, enquired the staffs and took their fingerprints and also registered FIR in respect of the above theft *vide* FIR No. 194/2005, dated 1-9-2005 and subsequently the management transferred him to Vadamangalam Liquor shop on 16-9-2005 and while being so, the management issued a show cause notice to the petitioner alleging stock deficit to the tune of ₹ 15,331 took place in the month of August, 2005 and thereby, the management asked the petitioner to deposit the sum of ₹ 7,665.50 within 3 days of the notice. Immediately, the petitioner approached the Managing Director Mr. P. Viveganandane and explained him that the alleged stock deficit is not due to any misappropriation but, only on account of the theft that occurred on 1-9-2005, and however, the Managing Director was not convinced and insisted him to pay the deficit amount of ₹ 7,665.50 to stop the further proceedings. However, on the same day *i.e.*, 17-10-2005, he was transferred to Head Office, Puducherry without any reason and the management suspended him from service *vide* letter, dated 19-10-2005 and when he questioned the Managing Director, he said that it is

the procedural formality and insisted him to pay the full deficit amount of ₹ 7,665.50 to revoke the suspension order and as such left with no other option, on 20-10-2005, the petitioner has paid the deficit amount to the management and also given letter, dated 20-10-2005 for revocation of suspension. But, on the contrary the management had issued a charge-sheet, dated 21-10-2005 to the petitioner with false allegations.

(ii) It is further stated that petitioner has submitted a detailed explanation to the management on 24-10-2005 but, the management did not appreciate the facts and contentions made by him and the management through a letter, dated 26-10-2005 appointed Mr. K. Balaji, Advocate as Enquiry Officer to enquire into the charges levelled against him and during the enquiry proceedings, the petitioner has effectively defended himself and examined two witnesses on his side and the said witnesses deposed regarding the occurrence of theft. However, the Enquiry Officer without properly appreciating the evidence and deposition of witnesses submitted his report, dated 28-2-2006 stating that the charges levelled in the charge memo, dated 21-10-2005 was proved. During the period of suspension the petitioner was compelled by the respondent management to participate in the enquiry proceedings without giving any single pie to him towards subsistence allowance despite his several oral representations and further that since from the date of suspension and to till the date of dismissal, the management has not paid any single penny to the petitioner as suspension allowance and acted against the principles of natural justice and labour jurisprudence and the enquiry report submitted thereof is liable to be quashed as *null and void*. The Enquiry Officer though recommended the management to show leniency upon the petitioner on humanitarian grounds before inflicting punishment upon him, it was not considering by the management and they arbitrarily issued dismissal order, dated 3-3-2006 and thereby, terminated the services of the petitioner which is against the doctrine of proportionality and hence, the dismissal order issued by the respondent management is *void*, illegal, invalid, improper in the eye of law.

(iii) It is further stated that on 30-10-2006 the petitioner made a representation to the management to review the dismissal order, dated 3-3-2006 but, no action has been taken by the management and hence, he has filed a Writ petition before the Hon'ble High Court of Madras under W.P. No. 8708 of 2010 to dispose off his review petition, dated 30-10-2006 and the same was allowed on 27-4-2010 by the Hon'ble High Court of Madras with a direction to the management to dispose of the petitioner's

representation, dated 30-10-2006 within a period of 6 weeks and as such the management through letter dated 18-5-2010 fixed enquiry on 28-5-2010 and rejected his review petition *vide* order, dated 3-6-2010. Aggrieved by the same, the petitioner has filed another W.P. No. 17032 of 2010 before the Hon'ble High Court of Madras for quashing the order, dated 3-6-2010 passed by the management and consequently direct the management to reinstate the petitioner in his service and in view of the endorsement made by the petitioner's counsel on 9-1-2014, the Hon'ble High Court of Madras passed an Order dismissing the Writ petition as withdrawn granting liberty to approach the appropriate authority.

(iv) It is further stated that on 19-2-2014, the petitioner made a representation to the Labour Officer (Conciliation), Puducherry to intervene in the above issue in which the respondent management submitted its reply on 10-6-2014 with evasive and false allegations against the petitioner and since no amicable settlement is reached between the parties to the dispute, this industrial dispute has been referred to this Court by the Government for adjudication and further stated that the SHO, Muthialpet Police Station has submitted the Final Form Report No. 105/2006, dated 19-6-2006 in FIR No. 194/2005 before the Judicial Magistrate-II, Puducherry and thus, it is crystal clear that once FIR is registered, the police officials came to the scene of occurrence and done the investigation by examining the witnesses, taking finger prints, *etc.*, and thus, the act of the respondent without considering the above factual points and imputing the false charge of stock deficit upon the petitioner had no legs to stand and further stated that the act of the management is arbitrary, illegal, *mala fide*, unjust and invalid in the eye of law and therefore, the order of termination is liable to be set aside and further that the management and the Enquiry Officer failed to discuss anything about the theft occurred in the Muthialpet Bar on 31-8-2005 inspite of several representation made by the petitioner and the statements made by the other independent witnesses during the enquiry proceedings and further that the Managing Director of the respondent management was transferred on 28-2-2006, but, however without any authority and sanction of law, the Managing Director has passed the dismissal order, dated 3-3-2006 in a hurried situation which reflects the *mala fide* intention of the management and thus, the Managing Director is incompetent to pass the dismissal order, dated 3-3-2006 and hence, the dismissal order is *null and void* having no effect in the eye of law.

(v) It is further stated that the respondent management has not followed the principle of natural justice and straight away issued the dismissal order enclosing the enquiry report to the petitioner

and that right from the beginning the management was acted with a *mala fide* intention and ulterior motive so as to terminate the services of the petitioner at any cost and further stated that by the act of the respondent, the petitioner's health got deteriorated and he has spent nearly 1.5 lakhs for all these years in filing Writ Petitions before the Hon'ble High Court, travelling expenses, Advocate, fees, etc., and the respondent management has not paid any single pie to the petitioner till date towards his terminal benefits and that the dismissal order dated 3-3-2006 is arbitrary, *null* and *void*, illegal, invalid, improper and hence, it is liable to be set aside and prayed this Court to direct the respondent management to reinstate the petitioner in service with full back wages, continuity of service and all other attendant benefits.

3. The brief averments of the counter statement filed by the respondent are as follows :

The respondent denied all the averments made by the petitioner in the claim petition and stated that the petitioner was appointed initially on consolidated basis and subsequently as daily rated Salesman and the petitioner was not discharged his services in a sincere and honest manner and there is no truth on the allegation of the petitioner that a theft was occurred on 31-8-2005 at midnight at Amudhasurabi Liquor Shop, Muthialpet, Puducherry and further stated that the disciplinary proceedings was initiated against the petitioner for the charge described in the charge memo, dated 21-10-2005 towards misappropriation of amount of ₹ 15,331 on 1-9-2005 by committing stock deficit and the said act of misappropriation by the petitioner was a misconduct as per clause 29(26) of service regulations and it also attract misconduct of negligence as per clause 29(1) of the service regulations and the act of commission will come under the purview of the misconduct and fails to maintain absolute integrity and devotion to duty which attract under clause 28(3)(2) of service regulation and that based on the charges, domestic enquiry was conducted by an independent person namely, Thiru K. Balaji, Advocate, Puducherry and as per the findings of the Enquiry Officer all the charges of misconduct were proved and as such the management issued the order of termination dated 3-3-2006 by a speaking order based on principle of natural justice and further stated that the deficit amount was paid by the petitioner voluntarily and that the payment of stock deficit amount will not wipe out the charges of misconduct as per the principle of labour jurisprudence and the punishment of dismissal order, dated 3-3-2006 was passed based on the gravity of misconduct and there is no possibility to consider for employment of the petitioner and prays to dismiss the claim petition of the petitioner.

4. In the course of enquiry WW.1 was examined and Ex.W1 to Ex.W32 were marked and on the side of the respondent RW.1 was examined and Ex.R1 and Ex.R2 were marked.

5. The point for consideration is:

Whether the dispute raised by the petitioner against the respondent management over his non-employment is justified or not and whether the petitioner is entitled for the relief as claimed by him?

6. Both sides are heard. The submission of both the parties, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. In support of his contention the learned Counsel for the petitioner has relied upon the Judgment reported in (i) 2013 (3) MLJ 101, (ii) CDJ 2013 MHC 2606, (iii) CDJ 2013 MHC 868. On the other hand, the learned Counsel appearing for the respondent management has also relied upon the following Judgments : (i) CDJ 2006 SC 662, (ii) CDJ 2006 SC 1072, (iii) CDJ 2007 MHC 281, (iv) CDJ 2006 SC 305, (v) CDJ 2006 SC 113.

7. It is not in dispute that, the petitioner has joined in the respondent management on consolidated basis in the month of August, 2002 and subsequently, he was appointed as daily rated Salesman during the month of May, 2005 and he has discharged his service assigned by the respondent management at Amudhasurabi Liquor Shop and due to some deficit in the stock the disciplinary proceedings was initiated against the petitioner for misappropriation of amount to the tune of ₹ 15,331 by committing stock deficit and after the enquiry was conducted by the Enquiry Officer the petitioner was terminated from service on 3-3-2006.

8. It is the evidence of WW.1 that he has not committed any deficit in the stock and that there was a theft taken place at the Liquor shop on the mid-night of 31-8-2005 and the police complaint has been lodged on 1-9-2005 before the Muthialpet Police Station and they have registered FIR in Cr. No. 194/2005 and subsequently he was transferred from Amudhasurabi Liquor Shop to Vadamangalam Liquor Shop on 16-9-2005 and the respondent management has issued a show cause notice to the petitioner for stock deficit to the tune of ₹ 15,331 and he has not misappropriated any amount as alleged by the respondent and only stock deficit occurred due to the theft taken place on the mid-night of 31-8-2005 and after the receipt of the notice for stock deficit he approached the Managing Director of the respondent management and the Managing Director insisted him to pay the deficit amount of ₹ 7,665.50 to the management and he was suspended from service and subsequently he has paid the deficit amount on 20-10-2005 to the respondent management and

subsequently the domestic enquiry was conducted without following the procedure and the petitioner has been permitted to participate in the enquiry proceedings and a report was submitted on 28-2-2006 and no subsistence allowance was paid to him and he was terminated from service on 3-3-2006 and he approached the Hon'ble High Court in W.P. No. 8708 of 2010 and the Hon'ble High Court was directed the respondent management to dispose the petitioner's representation, dated 30-10-2006 within a period of 6 weeks and the respondent management fixed an enquiry on 28-5-2010 and rejected his review petition on 3-6-2010 against which the petitioner had filed a Writ Petition in W.P. No. 17032 of 2010 to quash the order passed by the respondent management and to reinstate the petitioner in service and however in view of the endorsement of the petitioner's Counsel on 9-1-2014 the Hon'ble High Court was pleased to dismiss the Writ Petition as withdrawn granting liberty to approach the appropriate authority and the respondent has not followed the procedure of principles of natural justice straight away issued the dismissal order enclosing the enquiry report to the petitioner and the respondent management and the Enquiry Officer have failed to discuss about the theft occurred in the mid-night of 31-8-2005. In order to prove the case of the petitioner, apart from the oral evidence of WW.1, the petitioner has exhibited Ex.W1 to Ex.W32. The oral evidence of WW.1 and the documents marked by him would evident that on 1-9-2005 the Muthialpet Police Station has registered a case for the theft committed at the respondent establishment wherein, the petitioner was working and it was closed as undetected on 19-6-2006 and subsequently, the petitioner was transferred to other establishment of the respondent and he was suspended from service and the petitioner made some representation to the respondent management and has given explanation and enquiry was conducted against him and subsequently he was terminated from service against which he has filed Writ Petitions before the Hon'ble High Court and the petitioner has obtained some information under the Right to Information Act.

9. On the side of the respondent, the Deputy Manager of Pondicherry Co-operative Wholesale Stores Limited was examined as RW.1 and he has stated in his evidence that it is true that the petitioner has joined in the Pondicherry Co-operative Wholesale Stores Limited initially on consolidated basis and subsequently as daily rated Salesman during the May, 2005 and that the petitioner was assigned to work in the Amudhasurabi Liquor Shop, Muthialpet by the respondent management and however, there is no truth in the allegation that he has discharged his service in a sincere and honest manner without any blemish and also the allegation that on 31-8-2005 during the mid-night a theft occurred in the Amudhasurabi Liquor Shop and further he deposed that the respondent has

taken disciplinary action for the mis-conduct committed by the petitioner and that there is a deficit in the stock as per the stock register and that therefore, the petitioner has committed mis-appropriation on 1-9-2005 by deficiating the stock of the Amudhasurabi Liquor Shop and the domestic enquiry was conducted by an independent person and in the enquiry the charges of mis-conduct was proved against the petitioner and a report was submitted by the Enquiry Officer on 28-2-2006 and that therefore the petitioner was given an opportunity to defend his charge and hence, the management has dismissed the petitioner from service through office order, dated 3-3-2006 by a speaking order and that therefore, the petitioner is not entitled for any reinstatement.

10. From the evidence of RW.1, it is clear that the contention of the respondent management is that the petitioner had committed misconduct of misappropriation to the tune of ₹ 15,331 on 1-9-2005 and the domestic enquiry was conducted in accordance with the natural justice and thereby, he has been removed from service and hence, the petitioner is not entitled for any order of reinstatement. On the other hand, it is clear from the pleadings of the petitioner that the contention of the petitioner is that the stock deficit was occurred only due to the theft occurred on the mid-night of 31-8-2005 for which the FIR was registered on 1-9-2005 and the deficit amount also has been paid by him as directed by the management and he has not been given appropriate opportunity in the domestic enquiry and even the Enquiry Officer who conducted the domestic enquiry has recommended that to give only lenient punishment to him, it was not considered by the management and it is also clear from the evidence of WW.1 that the further contention of the petitioner is that he has not committed any misappropriation as alleged by the respondent management and theft is the only reason for the stock deficit and after the enquiry, the respondent management has not given any show cause notice before passing the order of termination of service of the petitioner and though the petitioner was under suspension the subsistence allowance has not been paid to the petitioner while the domestic enquiry was conducted.

11. The learned Counsel appearing for the petitioner pointed out that they have proved the fact of theft was committed at Amudhasurabi Liquor Shop by filing the copy of the FIR registered by the Muthialpet Police Station as Ex.W1 and that the respondent management has not given opportunity by issuing a show cause notice to decide the punishment which is to be given to the petitioner after getting domestic enquiry report from the Enquiry Officer and that the domestic enquiry was not in accordance with the principles of natural justice and since even the petitioner has not given subsistence allowance though he was suspended at the time of conducting the domestic enquiry.

12. On this aspect the evidence of RW.1 was perused which runs as follows:

“மனுதாரர்கள் எனது நேரடி கட்டுப்பாட்டுல் வேலை பார்க்கவில்லை. 3-3-2006 அவர்கள் பணிநீக்கம் செய்யப்பட்டார்கள். அப்போது, வேறொரு பிரிவில் நான் பணியாற்றிக் கொண்டிருந்தேன். தற்போதுள்ள குற்றச்சாட்டுக்கள் தவிர அவர்கள் மீது வேறெந்த குற்றச்சாட்டுகளும் இல்லை. உடைகிற பாட்டிலை ஸ்டாக்கில் கொடுத்து மாற்றிக்கொள்ளலாம் அதனால் குறைபாடு இருக்காது. என்னிடம் காட்டப்படும் ஆவணம் எங்கள் நிறுவனத்தில் கொடுக்கப்பட்டதுதான். அது மதசாஆ 32 ஆகும். பொதுவாக ஸ்டாக்கில் குறைபாடு எப்போதும் ஏற்படுவதுதான். ஸ்டாக் குறைபாடு ஏற்படுத்திய நபர்கள் மீது நடவடிக்கை எடுப்போமா என்றால் எடுப்போம். முதலில் Memo. கொடுப்போம். பிறகு அவர்கள் அதற்கு பணம் கொடுத்துவிடுவார்கள். Memo. கொடுத்தற்கான விளக்கம் கொடுத்து அது ஏற்றுக் கொள்ளப்பட்டால் நடவடிக்கை கிடையாது. ஏற்றுக்கொள்ளாவிட்டால் நடவடிக்கை உண்டு. மனுதாரர்கள் என்ன விளக்கம் கொடுத்துள்ளார்கள் என்று எனக்கு தெரியாது. மற்ற தொழிலாளர்கள் கொடுத்த விளக்கமும் மனுதாரர்கள் கொடுத்த விளக்கமும் என்னிடம் இருக்கிறது. அந்த ஆவணங்களை தாக்கல் செய்ய சொன்னால் தாக்கல் செய்வோம்..... மற்ற பணியாளர்கள் கொடுத்த விளக்கக் கடிதங்களை ஏற்றுக் கொண்டு அவர்கள் பணியிலிருந்தாலும் அந்த விளக்க கடிதங்களை நீதிமன்றத்திற்கு கொண்டுவரவில்லை என்று கேட்டால் அதற்கும் வழக்கிற்கும் சம்பந்தம் இல்லை அதனால் கொண்டு வரவில்லை. அப்படி எந்த விளக்க கடிதமும் எந்த தொழிலாளியும் கொடுக்கவில்லை என்றும் வழக்கிற்காக பொய்யாக சொல்கிறேன் என்றால் சரியல்ல”.

From the above evidence, it is clear that the petitioner has not committed any other mis-conduct in their service except the stock deficit alleged to have been committed by him on 1-9-2005 and further it is also clear that the respondent management would not take any further action for the stock deficit if, the explanation is accepted by them for the stock deficit. But, in this case, they have not exhibited any explanation of any one of the employee before this Court.

Further evidence of RW.1 runs as follows :

“..... சுவாமி நாதன் என்பவர் 2005-ஆம் ஆண்டு ₹ 2,12,349 குறைபாடு ஏற்படுத்தியிருப்பதாக சொன்னால் சரிதான். அவர் தற்போது ரிடையர்டு ஆகிவிட்டார். எங்கள் நிர்வாகத்தில் 4 பேர் மீது தான் நடவடிக்கை எடுக்கப்பட்டது. அதில் சுவாமி நாதன் என்பவர் பெயர் இல்லை. நடவடிக்கை எடுக்கப்பட்டவர்களில் மணிகண்டன் என்பவர் தற்போது பணியில் இருக்கிறார். பணிநீக்கம்செய்யப்பட்டதாக மதசாஆ 32-ல் குறிப்பிடப்பட்டுள்ள மணிகண்டன் தற்போது எங்கள் நிர்வாகத்தில் வேலை பார்க்கிறார். ஆனால், எங்கு வேலைப் பார்க்கிறார் என்று எனக்கு தெரியாது. மதசாஆ 32-ல் உள்ள கையாடல் செய்யப்பட்ட மணிகண்டன் எப்படி வேலையில் சேர்ந்தார் என்றால் அது பற்றி எனக்கு

தெரியாது. அவரை Managing Director தான் வேலைக்கு சேர்த்திருக்கிறார். அதை அவரிடம் கேட்டால் தான் தெரியும். 2000-2015 வரை பணியாற்றிவர்களில் 4 பேர் மட்டுமே பணிநீக்கம் செய்யப்பட்டவர்கள் என்றால் சரிதான். அது அப்படி தான் மதசாஆ 32-ல் சொல்லப்பட்டுள்ளது. வருடா வருடம் 100-க்கும் மேற்பட்டவர்கள் மேல் ஸ்டாக் குறைபாடு ஏற்படுத்தியவர்கள் மீது நடவடிக்கை எடுக்கப்பட்டுள்ளது. சுமார் 15 ஆண்டுகளில் 1,500 பேர் ஸ்டாக் குறைபாடு ஏற்படுத்தியதாக நாங்கள் கொடுத்த மதசாஆ 32-ல் சொல்லப்பட்டுள்ளது. அதில் 4 பேரை மட்டும் தான் நாங்கள் பணிநீக்கம் செய்திருக்கிறோம் என்றால் சரிதான்”.

From the above evidence, it is clear that the respondent management has admitted the fact that information in Ex.W32 was issued by the respondent Co-operative Stores Limited under the Right to Information Act to the petitioner and it is also admitted by the respondent management RW.1 that for every year the respondent management has found not less than 100 workmen are committing stock deficit and from the year 2000-2015 for about 15 years not less than 1,500 workmen have committed stock deficit in which only 4 persons have been terminated and furthermore, it is also admitted by RW.1 that one Manikandan whose name was mentioned in Ex.W32 and who was removed from service by the respondent management for misappropriation by committing stock deficit has been once again appointed in the respondent Co-operative Stores Limited and furthermore, though admittedly 1,500 workmen alleged to have been committed misappropriation by committing stock deficit the respondent management has failed to state that why 1496 workmen have been left without any punishment of termination of service since 4 only have been given punishment of termination of service. These facts would go to show that the respondent management has not taken any uniform stand in taking disciplinary action in respect of misappropriation committed by the workers. Though admittedly, 1,500 workmen have been committed stock deficit, nothing is before this Court why 1,496 workmen have not been terminated from service and 4 of them alone have been terminated from service for the charge of stock deficit.

13. All the citations relied upon by the respondent management has enlightened that if any workman, committed any misappropriation it should be viewed seriously and has to be punished severely. But, in this case, admittedly the FIR has been registered by the police for the offence of theft of some goods in the Liquor shop and the same was admitted by the respondent side. Mere the case was closed as undetected could not amount that this petitioner and the Junior Assistant have committed stock deficit and that therefore, the charges levelled against the

petitioner itself is suspicious and in such circumstances, the severe punishment of termination from service cannot be imposed and hence, the punishment of termination is not a reasonable one in this case.

14. Particularly, in this case admittedly, the FIR has been registered by the police for the offence of theft alleged to have been happened on the mid-night of 31-8-2005 which would go to show that there might be a theft in the said night and thereby, the stock deficit might have been happened on 1-9-2005 when the respondent officers audited the same. This alone is sufficient that there is a suspicion over the alleged mis-conduct of charge levelled against the petitioner that he has committed stock deficit. Though the police might not have found out the accused who has committed the theft and closed the case as undetected that alone is not sufficient to conclude that this petitioner alone has committed stock deficit with the intention of misappropriate the funds of the respondent and thereby, the decision taken by the Enquiry Officer that the petitioner has committed stock deficit in the domestic enquiry is not sustainable and therefore, the decision taken by the respondent management and the Enquiry Officer that conclusively the petitioner has committed stock deficit cannot be accepted.

15. Furthermore, as far as the punishment of termination from the service of the petitioner is concerned, it is contended by the petitioner that the respondent management has not given any show cause notice to the petitioner to decide the punishment. It is learnt from Ex.W12 - Enquiry report that the enquiry was finalized and the report was made only on 28-2-2006 and the petitioner was terminated on 3-3-2006 without giving any notice. The respondent also has not exhibited any such notice before this Court that they have issued any notice to the petitioner for giving an opportunity to make his representation as to why the proposed punishment should not be inflicted against him. In this case, no notice was sent by the respondent management to the petitioner after getting the report from the Enquiry Officer before terminating the petitioner from service. As admittedly, no notice was given to him by the respondent management, it is clear that they have not followed the procedures laid down under the Constitution of India under Article 311(2) by refusing the reasonable opportunity to the petitioner. It is mandate to give an opportunity to the petitioner to make his representation as to why the proposed punishment should not be inflicted against him. But, in this case, no notice was issued before passing the order of termination of the petitioner from

service. Hence, it is clear that the respondent management has not followed the principles of natural justice in giving opportunity to the petitioner before terminating the petitioner from service.

16. Furthermore, the learned Counsel appearing for the petitioner relied upon the Judgment reported in CDJ 2013 MHC 2606, in which the Hon'ble High Court of Madras has observed that,

“As rightly argued by the learned Counsel for the second respondent that when the petitioner was placed under suspension from 11-3-1996, it was the bounden duty of the petitioner Management to pay the subsistence allowance till passing of the final order of termination on 1-9-2000. But, the petitioner Management paid the subsistence allowance from 11-3-1996 to 31-10-1998 only and after 1-11-1998 for the reason best known to them, they stopped the subsistence allowance. Since, the enquiry was held after 31-10-1999, the petitioner Management financially prevented the second respondent employee from participating in the enquiry for the reason of non-payment of subsistence allowance. In this context, the Law is well stated that

“the payment of subsistence allowance to an employee under suspension was not a bounty but, a right. No justifiable ground was made out by the respondents for non-payment of the subsistence allowance. The appellant was unable to appear in the enquiry on account of non-payment of subsistence allowance. It was a clear case of breach of principles of natural justice.”

From the above observation of the Hon'ble High Court, it is clear that whenever the workman is suspended, he should be given subsistence allowance till the end of the disciplinary action, otherwise it can be inferred that the respondent management has financially prevented the workman from participating in the enquiry for the reason of non-payment of subsistence allowance. In this case, also admittedly, the petitioner was not given subsistence allowance by the respondent management throughout the domestic enquiry and hence, it can be inferred that the petitioner was financially prevented from participating the enquiry. Furthermore, as rightly pointed out by the petitioner's Counsel admittedly though the petitioner has paid entire deficit amount within the short period of 10 days from the date of show cause notice, the punishment of termination is highly excessive and he can be given lighter punishment and furthermore, while 1496 delinquent workmen have been left without any punishment of termination of service, though the petitioner has

paid the stock deficit amount as directed by the respondent management, the punishment given to the petitioner is highly excessive and that therefore, for the foregoing reasons, it is clear that the punishment given by the respondent management that terminating the petitioner from service is not sustainable and unlawful and hence, the dispute raised by the petitioner before the Conciliation Officer is justified and the petitioner is entitled for order of reinstatement.

17. As this Court has decided that the industrial dispute raised by the petitioner before the Conciliation Officer is justified, it is to be decided whether the petitioner is entitled for back wages with continuity of service as claimed by the petitioner. In respect of the backwages and other attendant benefits absolutely there is no evidence that the petitioner was not working anywhere else after the dismissal and that therefore, he cannot be given full back wages. However, it is not the case of the respondent that the petitioner is working anywhere else and hence considering all the above facts and circumstances and the above foregoing reasons, this Court finds that the petitioner is entitled for only part of back wages and hence, this Court tentatively fix that the petitioner is entitled only for 25% back wages.

18. In the result, the petition is partly allowed and the industrial dispute raised by the petitioner over the non-employment is justified and an Award is passed by directing the respondent to reinstate the petitioner in service with continuity of service and further directed the respondent management to pay 25% of back wages to the petitioner from the date of raising the industrial dispute before the Conciliation Officer till the date of reinstatement with other attendant benefits. No cost.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in the open Court on this the 13th day of June, 2017.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.

List of petitioner's witness:

WW.1 — 23-1-2016 — Karthikeyan

List of petitioner's exhibits:

Ex.W1 — 1-9-2005 — Copy of the FIR No. 194/2005 by the Station House Officer, Muthialpet, Police Station.

Ex.W2 — 19-6-2006 — Copy of the Final Form Report No. 105/2006 in FIR.No. 194/2005 submitted by the Station House Officer, Muthialpet, Police Station to the Hon'ble Judicial Magistrate-II, Puducherry.

Ex.W3 — 16-9-2005 — Copy of the transfer order of the petitioner issued by the management.

Ex.W4 — 17-10-2005 — Copy of the transfer order of the petitioner issued by the management.

Ex.W5 — 19-10-2005 — Copy of the Suspension order of the petitioner issued by the management.

Ex.W6 — 18-10-2005 — Copy of the letter submitted by the petitioner to the management.

Ex.W7 — 20-10-2005 — Copy of the receipt issued by the respondent towards payment of the deficit amount paid by the petitioner.

Ex.W8 — 20-10-2005 — Copy of the letter given by the petitioner to the management.

Ex.W9 — 21-10-2005 — Copy of the charge-sheet issued by the respondent management.

Ex.W10 — 24-10-2005 — Copy of the explanation letter sent by the petitioner to the respondent management.

Ex.W11 — 26-10-2005 — Copy of the Enquiry Officer appointment letter.

Ex.W12 — 28-2-2006 — Copy of the enquiry report.

Ex.W13 — 3-3-2006 — Copy of the dismissal order issued by the management.

Ex.W14 — 30-10-2006 — Copy of the letter given by the petitioner to the management requesting review of the dismissal order.

Ex.W15—27-4-2010 — Copy of the order of the Hon'ble High Court of Madras in W.P.No. 8708/2010.

Ex.W16—18-5-2010 — Copy of the letter sent by the management to the petitioner.

Ex.W17— 3-6-2010 — Copy of the order sent by the management rejecting the petitioner's review petition.

Ex.W18— 9-1-2014 — Copy of the order of the Hon'ble High Court of Madras in W.P. No. 17032/2010.

Ex.W19—19-2-2014 — Copy of the representation made by the petitioner to the Labour Officer (Conciliation), Puducherry.

Ex.W20—10-6-2014 — Copy of the reply letter submitted by the respondent to the Labour Officer (Conciliation), Puducherry.

Ex.W21—26-6-2014 — Copy of the objection letter submitted by the petitioner to the Labour Officer (Conciliation), Puducherry.

Ex.W22—26-9-2014 — Copy of the failure report forwarded by the Labour Officer (Conciliation), Puducherry to the Secretary to Government (Labour), Puducherry.

Ex.W23—10-10-2005 — Copy of the Memo. issued by the respondent management to the petitioner.

Ex.W24—23-10-2006 — Copy of the reminder letter submitted by the petitioner to the respondent.

Ex.W25—19-1-2010 — Copy of the RTI application submitted by the petitioner to the PIO of respondent management.

Ex.W26—13-2-2010 — Copy of the RTI reply given by the respondent to the petitioner.

Ex.W27— 8-2-2014 — Copy of the RTI application submitted by the petitioner to the PIO of respondent management.

Ex.W28—28-2-2014 — Copy of the RTI reply given by the respondent to the petitioner.

Ex.W29—11-3-2014 — Copy of the RTI Appeal submitted by the petitioner to the Registrar of Co-operative Societies, Puducherry (1st Appellate Authority).

Ex.W30—15-4-2014 — Copy of the Order passed by the Registrar of Co-operative Societies, Puducherry (1st Appellate Authority).

Ex.W31—21-3-2014 — Copy of the letter sent by the respondent management to the petitioner along with enclosure.

Ex.W32—13-2-2016 — Copy of the reply to Form-I, dated 14-1-2016 filed under the Right to Information Act, 2005.

List of respondent's witness:

RW1 — 14-2-2017 — R.T. Gunasekaran

List of respondent's exhibits:

Ex.R1 — — Copy of the Employees' Service Regulations of the Pondicherry Cooperative Wholesale Stores Limited, P44 (Amudhasurabi).

Ex.R2 — 27-7-2010 — Copy of the Writ Petition in W.P. No. 17031/2010 filed by R. Ramesh before the Hon'ble High Court of Madras.

G. THANENDRAN,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Puducherry.